NO. 21084

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS GARCIA,

Appellant,

vs.

UNITED STATES OF AMERICA.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WM. MATTHEW BYRNE, JR.,
United States Attorney,
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APPELLEE'S BRIEF

I

STATEMENT OF PLEADINGS AND FACTS DISCLOSING JURISDICTION

Appellant Carlos Garcia appeals from his conviction on Count Three of a three count indictment charging him with a violation of Title 21, United States Code, Section 174 (Concealment of Illegally Imported Narcotics). He was charged with Co-defendant Edward G. Sanchez who does not appeal his conviction on Counts One and Two.

Count Three, upon which Appellant has been convicted charges him with knowingly and unlawfully receiving, concealing and facilitating the concealment and transportation of 1.190 grams of heroin, a narcotic drug, which he knew previously had been imported into the United States of America contrary to the provisions

of Title 21, United States Code, Section 173 [C. T. p. 2]. 1/

The indictment was filed on January 28, 1966 [C. T. p. 2].

Appellant and Co-defendant Sanchez waived jury on January 31, 1966 [C. T. p. 5], and on February 3, 1966, trial commenced without a jury before the Honorable Roger D. Foley, United States District Judge [R. T. p. 1]. 2/

On February 4, 1966, Appellant was found guilty on Count Three and not guilty on Counts One and Two of the indictment [C. T. p. 13].

On April 1, 1966, Judge Foley sentenced Appellant to ten years and recommended that he be committed to a hospital for treatment of narcotics addiction [C. T. p. 15].

The United States District Court for the Southern District of California had jurisdiction of this case based upon Title 21, United States Code, Section 174 and Title 18, United States Code, Section 3231. The jurisdiction of this Court is based upon Title 28, United States Code, Sections 1291 and 1294.

II

STATUTE INVOLVED

Title 21, United States Code, Section 174 provides:

> "Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to

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1/ "C. T." refers to Clerk's Transcript.

2/ "R. T." refers to Reporter's Transcript.

law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. . . .

"Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

III

STATEMENT OF THE CASE

A. Questions Presented

1. Did probable cause exist for the arrest of Appellant for violations of the Federal Narcotic Laws?

2. Assuming that there existed probable cause for the arrest of Appellant for a violation of the Federal Narcotic Laws, were the arresting officers required to obtain either an arrest or a search warrant at the time they entered Appellant's residence for the purpose of arresting him?

3. Did the Court erroneously admit into evidence Appellant's statements, made subsequent to his arrest?

B. Statement of Facts

While Agent Chris Saiz of the Federal Bureau of Narcotics was purchasing narcotics from co-defendant Edward G. Sanchez, on December 8, 1965, Sanchez stated that in the future, Saiz should telephone him when he wished additional narcotics [R. T. p. 3]. On the following day, Saiz telephoned Sanchez, stating to him that he desired to purchase additional heroin. Sanchez stated that the heroin would be available on the following day [R. T. p. 4].

At approximately 12:30 p. m., on December 10, 1965, Agent Saiz, using a telephone number previously furnished by Sanchez, telephoned Sanchez and made arrangements to purchase 1/2 ounce of heroin. Saiz was told to come to Sanchez's residence [R. T. p. 5].

Shortly thereafter, Agent Saiz, under the surveillance of other officers of the Federal Bureau of Narcotics and Deputies of the Los Angeles Sheriff's Office, drove in a Government vehicle to the intersection of LaVerne and Fourth Streets in Los Angeles, California. There, at approximately 1:15 p. m., he met with Sanchez, who suggested that they proceed to his friend's house to pick up the heroin. Sanchez and Agent Saiz then proceeded in the Government vehicle to the intersection of Brannock and Eastern. Sanchez exited the vehicle and made numerous telephone calls [R. T. p. 9]. Sanchez returned to the vehicle and the two drove to Eastern and Floral. After making an additional telephone call, Sanchez

advised Agent Saiz that the heroin would be ready at approximately 3:00 p. m. Saiz then drove Sanchez to the latter's residence where the two parted. All of the foregoing information was related to Agent Francis L. Briggs of the Federal Bureau of Narcotics [R. T. p. 10].

At approximately 3:00 p. m., Agent Saiz returned to Sanchez's residence [R. T. p. 11]. The two drove to the 700 block of Rowan Street where they met with Paul Perez whom Agent Briggs knew had previously been convicted of violating the Federal Narcotic Laws. Perez entered the Government vehicle, and directed Agent Saiz to drive to the 2700 block of Slauson [R. T. p. 12]. There, Perez exited the Government vehicle, walked to the rest-room of a service station, returned to the vehicle and displayed two rubber condoms containing a white substance which appeared to be heroin [R. T. p. 13].

Officer Saiz, Sanchez, and Perez then drove to the 300 block of Gifford Street [R. T. p. 13]. Perez explained that the heroin would have to be "cut" before it could be sold. At Gifford and Michigan Streets, Perez left the vehicle, stating that he would send someone there to meet the agent and Sanchez [R. T. p. 14].

Approximately ten minutes later [R. T. p. 57], Agent Saiz observed Appellant Garcia, who was standing near the residence at 320 Gifford, motion to Sanchez [R. T. p. 19]. Sanchez left Saiz and met with Appellant. The two were seen to walk to a neighborhood store [R. T. p. 20].

Sanchez returned to the Government vehicle telling Agent

Saiz that he had not "scored", but that the man with whom he had met (nicknamed "Lone" or "Lonie") had said the heroin was not ready but that he would call later [R. T. pp. 21-22]. Agent Saiz then drove Sanchez to the latter's residence, where the two parted. Sanchez stated that Saiz should telephone him later [R. T. p. 23].

Agent Saiz related his observations to Agent Briggs. This information included Lonie's appearance at 320 Gifford and the meeting between Appellant and Sanchez [R. T. pp. 24-25]. Agent Briggs knew that "Lonie" was Appellant Garcia's nickname. Briggs further realized that he had previously arrested Appellant for a violation of the Federal Narcotic Laws, and that Appellant had been convicted. Finally, Briggs knew Appellant lived at 320 Gifford [R. T. pp. 149-150].

Agent Saiz returned to Sanchez's residence at approximately 6:00 p. m., where the two met briefly. Saiz then advised Agent Briggs that Sanchez had stated that the heroin would be ready in a few minutes [R. T. p. 27].

Agent Saiz then returned to Sanchez's residence and the latter entered the Government vehicle. Sanchez stated that he had spoken to his friend and the heroin was ready [R. T. p. 28]. He requested and received $100. 00 from Saiz for the purchase of 1/2 ounce of hereoin, exited the Government vehicle, walked west on Michigan and returned, stating to Agent Saiz that he had turned over the money to his friend. Sanchez stated that they should drive to Michigan and Mariana Streets. There Sanchez again left the vehicle, and walked toward the intersection of Michigan and Mariana,

whereupon he was no longer within Agent Saiz's view [R. T. p. 28].

Sanchez returned to the vehicle, displaying two rubber condoms, and stated to Agent Saiz that he had scored. Saiz and Sanchez then drove off. Shortly thereafter, Sanchez was arrested in Saiz's vehicle [R. T. p. 30].

Narcotics Agent Sergio Borquez was directed by Agent Briggs to commence surveillance in the area of Michigan and Gifford Streets. Borquez had been advised of Agent Saiz's activities [R. T. p. 81].

Deputy Sheriff Richard Kennerly pointed out the residence at 320 Gifford, indicating to Borquez that Appellant Garcia had been selling narcotics from this address [R. T. pp. 83-84, 207]. Agent Borquez had also been advised of Appellant's Federal Narcotics conviction [R. T. p. 84].

At approximately 6:10 or 6:15 Agent Borquez observed Appellant and Sanchez meet inside the gate at 320 Gifford [R. T. p. 83], and observed Sanchez leave the yard, and turn toward the direction where Agent Saiz's vehicle was parked [R. T. p. 86]. Shortly thereafter, Borquez observed Appellant and Paul Perez come out of the yard at 320 Gifford [R. T. p. 86]. Both returned and entered the yard [R. T. p. 87]. Shortly thereafter, a yellow cab approached 320 Gifford. Borquez observed someone whom he could not identify come from the address, enter the car and drive off [R. T. p. 87].

Agent Borquez advised Agent Briggs of what he had observed [R. T. p. 87]. Briggs then advised Borquez to enter the residence

at 320 Gifford for the purpose of arresting Appellant and Perez [R. T. p. 88].

Agents Borquez and Figueroa approached the north side of Appellant's residence. The door was open. As the agents approached the door, Borquez observed the Appellant run. Borquez entered the residence, announced his identity and arrested Appellant [R. T. p. 89]. Appellant was advised that he did not have to say anything; that anything he did say could be used against him, and that he had a right to an attorney [R. T. p. 90].

After arriving at Appellant's residence, Agent Briggs learned that Appellant had been advised of his constitutional rights. A quantity of heroin (Government's Exhibit 2) [C. T. p. 8] was found by Briggs in the bedroom [R. T. p. 157].

Appellant Garcia admitted to Briggs that the heroin (Government's Exhibit 2) belonged to him [R. T. pp. 160, 258].

IV

ARGUMENT

A. PROBABLE CAUSE EXISTED FOR APPELLANT'S ARREST FOR A VIOLATION OF THE FEDERAL NARCOTIC LAWS.

The Court was correct in finding that at the time the officers arrested Appellant, the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that Appellant was

committing an offense. Brinegar v. United States, 338 U.S. 160, 175-176 (1949); Henry v. United States, 361 U.S. 981, 202 (1959). The arresting agents acted based upon the following knowledge:

(1) Co-defendant Sanchez sold heroin to Agent Saiz two days before Appellant was arrested [R.T. p. 3].

(2) Having made arrangements to purchase heroin from Sanchez on December 9, 1965, Agent Saiz met with Sanchez on December 10th. On that occasion Sanchez introduced Agent Saiz to Paul Perez. Agent Briggs knew that Perez had previously been convicted of violating the Federal Narcotic Laws [R.T. p. 12].

(3) Perez accompanied Agent Saiz and Sanchez in Saiz's vehicle to a destination which had been suggested by Perez [R.T. p. 12]. At this destination, Perez exited the vehicle and thereafter returned with two rubber condoms containing what appeared to Agent Saiz to be heroin [R.T. p. 13].

(4) Perez directed Saiz to drive to another location. There he left Saiz and Sanchez, telling them that he would send someone to meet with them [R.T. p. 14].

(5) Approximately ten minutes later, Agent Saiz observed Appellant Garcia motion to Sanchez. At that time, Garcia was standing near a residence at 320 Gifford [R.T. p. 19].

(6) Sanchez was then observed to meet with Appellant Garcia [R.T. p. 20].

(7) Sanchez returned to Saiz, stating that the man with whom he had just met and to whom he referred as "Lone" or "Lonie", had stated that the heroin was not then ready [R.T. pp. 21-22].

(8) Agent Briggs, to whom Agent Saiz had related his activities, recalled that he had previously arrested Appellant Garcia for a violation of the Federal Narcotic Laws, and that this arrest had led to a conviction. Briggs further knew that Garcia had resided at 320 Gifford, and was nicknamed "Lonie" [R. T. pp. 24-25].

(9) Shortly after 6:00 p. m., Agent Saiz met with Sanchez. The two drove to the area where Sanchez and Appellant had met that afternoon. One hundred dollars was turned over by Saiz to Sanchez. Sanchez left the vehicle, and thereafter returned, indicating that his friend had received the money. Sanchez left the vehicle again, and returned with two rubber condoms, stating that he had scored [R. T. p. 28].

(10) Shortly thereafter, Sanchez was arrested in Saiz's automobile for violation of the narcotic laws [R. T. p. 30].

(11) At approximately 6:10 or 6:15 p. m. Agent Borquez, who was conducting surveillance operations, observed Appellant Garcia meet with Sanchez inside the gate at 320 Gifford. Sanchez was then observed to leave the yard, and walk toward the direction of Agent Saiz's vehicle [R. T. pp. 83-86].

(12) Deputy Sheriff Kennerly told Borquez that Appellant was selling narcotics from 320 Gifford [R. T. pp. 83-84, 207].

(13) Paul Perez was observed in the yard at 320 Gifford at about this time [R. T. 86].

(14) When the Agents approached Appellant's residence, he began to run [R. T. p. 89].

In Dagampat v. United States, 352 F. 2d 245 (9th Cir. 1965), the Court found probable cause on the following facts: Following directions of informant Rodriguez, on May 28, 1964, Agent Nice drove Rodriguez (and another) to a certain street intersection in Los Angeles. Rodriguez told Agent Nice that his "connection" (supplier of narcotics) told him to sit on a particular bus stop bench at a certain time. Nice gave to Rodriguez $225.00, consisting of bills whose serial numbers had previously been recorded. Rodriguez sat on the bus stop bench within view of Agent Nice. In a few minutes Agent Nice observed appellant drive up, stop near the bench, and have conversation with Rodriguez. Rodriguez then returned to Agent Nice, and said that his connection didn't bring the narcotics with him, and that Rodriguez would have to go around the block to get it. Then Rodriguez got into the car driven by appellant, and appellant drove out of Agent Nice's view. Agent Nice noted the description and license number of the car. About ten minutes later, Rodriguez returned and delivered narcotics to Agent Nice.

Later that day Agent Nice discovered that the car in question was registered to appellant, and further discovered that appellant had previously been arrested for narcotics violations, and had previously been convicted as an addict.

On June 24, 1964, Agent Nice learned that Rodriguez had been arrested a week before, for selling narcotics to a Federal Agent. The arresting Agent told Nice that during the transaction Rodriguez had met with a person whose appearance and physical

description fit that of appellant.

At about 6:00 p. m. on June 24, Nice and other agents went to appellant's home, without a warrant, for the purpose of arresting him. As the officers approached the front of appellant's residence, appellant, who had been standing in the doorway, went inside and slammed the door. The Agents ran up to the door and knocked; they heard a sound as if the door was being bolted; they hollered "Police Officers!" and knocked more; they heard a voice call "What do you want?"; they answered: "Police officers, Dagampat, open the door!" and continued knocking.

The Agents then heard sounds as if someone were running away from the door, and then they forced open the door. After doing so, they observed appellant running toward the bathroom; they ran after him, telling him to stop, that he was under arrest. He kept going, entered the bathroom and slammed the door. The Agents forced open the bathroom door, and seeing appellant reaching toward the toilet, retrieved from the toilet a paper bag that contained marijuana. A search of the premises also produced $220.00 of the $250.00 that had been given to Rodriguez on May 17, 1964, in payment for heroin.

Appellant relies primarily on the case of Mangaser v. United States, 335 F. 2d 971 (9th Cir. 1964), the facts of which bear some similarity to those in the case at bar. In Mangaser, a special employee of the Bureau of Narcotics drove with an informant to make a purchase of narcotics, followed by a Buick containing other potential customers for narcotics. The employee observed

an apparently disabled car whose occupants were Mr. and Mrs. Mangaser and their child. The informant walked up to the apparently disabled car and spoke to its occupants. The informant returned to the special employee and asked for the marked money for the purchase of heroin. While the informant was returning to the special employee's car, the car containing the Mangasers drove out of the special employee's view. The informant then left the view of the special employee, going in the same general direction as the car containing the Mangasers. Later the informant returned with narcotics, saying he had obtained his source's last supply and that the source had to go get some. No attempt was made to supply or even contact in any way the other potential customers for narcotics in the Buick that followed the special employee's car. When the Mangasers returned to their home later that day they were arrested without a warrant.

This Court held that the foregoing facts did not provide reasonable cause for the arrest of the Mangasers without a warrant. However, in the case at bar, the arresting officers had much more specific information, not only regarding the fact that an offense had been committed, but also that Appellant had committed it. Furthermore, there was no ambiguity about who was referred to when co-defendant Sanchez spoke of his friend and source, "Lonie".

Earlier, Perez had described in advance the manner in which Agents Saiz and Sanchez were to meet their connection.

Furthermore, in Mangaser the arresting officers had no information concerning prior narcotic violations by the Mangasers.

Here Agent Briggs and Borquez had the highly significant information that appellant had previously been convicted of a Federal Narcotic violation. As the Supreme Court said in Jones v. United States, 362 U.S. 257, 271 (1960):

> " * * * that petitioner was a known user of narcotics made the charge against him much less subject to skepticism than would be such a charge against one without such a history. "

That Appellant was a known prior offender of the Federal Narcotic Laws, could reasonably have had an important bearing on the officers' interpretation of his conduct as they approached the open door of his home. See United States v. Monroe, 205 F. Supp. 175 (D.C. E.D. La. 1962), 320 F. 2d 277 (5th Cir. 1963) affirmed, cert. denied 375 U.S. 991 (1964).

Appellant's act of running when seeing the officers approach the door to his home could hardly be considered anything but flight, or an attempt to destroy evidence, Dagampat v. United States, supra, at 248. Flight is a legitimate ground for the inference of guilt. Rosett v. United States, 315 F. 2d 86 (9th Cir. 1963), cert. denied, 375 U.S. 814. These factors, amounting to guilty conduct did not appear in Mangaser.

The arresting officers had sufficient probable cause to enter Appellant's residence and arrest him for a violation of the Federal Narcotic Laws.

B. SINCE PROBABLE CAUSE FOR THE BELIEF THAT APPELLANT HAD VIOLATED THE FEDERAL NARCOTIC LAWS EXISTED, NEITHER AN ARREST NOR SEARCH WARRANT WAS REQUIRED.

Appellant contends that notwithstanding the fact that probable cause may have existed for his arrest, since the arresting officers had neither a search nor arrest warrant [R. T. p. 104], the arrest and subsequent search were illegal. This contention, however, runs contrary to the most recent authorities.

This Court must apply California law to determine the validity of Appellant's arrest. In Ker v. State of California, 374 U.S. 23, 27 (1962), the United States Supreme Court said:

> "This Court, in cases under the Fourth Amendment, has long recognized that the lawfulness of arrests for Federal offenses is to be determined by reference to State Law insofar as it is not violative of the Federal Constitution." See also Miller v. United States, 357 U.S. 301 (1958); United States v. Di Re, 332 U.S. 581 (1947); Johnson v. United States, 333 U.S. 10 (1948).

Appellant complains that since the arresting officers had neither an arrest nor search warrant the subsequent search was unlawful since there was time enough in which to obtain a warrant. But California has no requirement that a warrant must be obtained if there is time to do so. In the recent case of People v. Stoner, 205 Cal. App. 2d 108, 110, 22 Cal. Rptr. 718, 720 (1962), reversed

on other grounds, 376 U.S. 483 (1964), the court said:

> "Furthermore, it is conclusively established in this State that the failure to obtain a warrant, even though there be time to do so, does not make unreasonable an otherwise reasonable search."

In Lorenzen v. Superior Court, 150 Cal.App.2d 506, 512-513, 310 P.2d 180-185 (1957), the Court upheld as valid an arrest and search made without a warrant of any kind, two weeks after the officers received the information on which the arrest was primarily based, saying:

> "We cannot say that * * * as a matter of law, permitting an elapse of approximately two weeks without getting a warrant, is without the 'flexibility' which the Rabinowitz case holds 'will be accorded law officers engaged in daily battle with criminals for whose restraint criminal laws are essential' (339 U.S. at page 65, 70 S.Ct. at page 435), or unreasonable."

In People v. Winston, 46 Cal.2d 151, 162-163, 293 P.2d 40, the California Supreme Court said:

> "Defendant unavailingly argues that here the police officers had ample time to procure a search warrant, and therefore, such warrant was required in order to validate the search and seizure of the incriminating evidence at the time of his arrest." (Emphasis supplied.)

The United States Supreme Court stated in United States v. Rabinowitz, 339 U.S. 56, 66 (1950):

> "To the extent that Trupiano v. United States, 334 U.S. 699 [68 S.Ct. 1229, 92 L.Ed. 1663], requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled. The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."

Finally, in McCray v. State of Illinois, ___U.S.___, 37 L.W. 4261, decided March 20, 1967, the United States Supreme Court once again approved the procedure of an arrest of a defendant for possession of narcotics when adequate probable cause had been demonstrated but when the arresting officers possessed neither a search warrant nor an arrest warrant.

C. THE SEARCH OF APPELLANT'S RESIDENCE WAS MADE INCIDENTAL TO A LAWFUL ARREST AND WAS PROPER IN SCOPE.

The arrest of Appellant having been lawful, the search incidental thereto and performed at the time of arrest was proper. Only the premises under the immediate custody and control of Appellant were searched. Of course, there was authority to conduct such a reasonable search of Appellant's bedroom, a room located

proximate to the room in which Appellant was arrested [R. T. p. 246]. See United States v. Rabinowitz, supra; Agnello v. United States, 269 U. S. 20 (1925). The entire premises under the arrested person's custody and control may properly be searched. Harris v. United States, 331 U. S. 145 (1947). Here the finding of a small packet of heroin concealed under the rug of Appellant's bedroom does not lead to an inference that an exploratory search was conducted.

Appellant cites the case of Drayton v. United States, 205 F. 2d 35 (5th Cir. 1953), in support of his position that the search was exploratory and too broad in scope. However, in Drayton, the narcotic agents searched a hotel room located some distance from the room where the arrest occurred and it was held that the search was illegal because it was tantamount to a "fishing for evidence". The Court further found that the arrest was being used as an excuse to search. That situation is, of course, different from the search here, which was limited to a search of the adjacent rooms of Appellant's residence.

D. THE COURT WAS CORRECT IN ADMITTING INTO EVIDENCE STATEMENTS MADE BY APPELLANT SUBSEQUENT TO HIS ARREST.

Appellant suggests that the Court erred in admitting certain of his statements into evidence. The statements complained of were made subsequent to Appellant's arrest [R. T. p. 90], and

involved the admission that Government's Exhibit 2 belonged to Appellant [R. T. p. 160].

Prior to questioning Appellant, Agent Borquez advised Appellant that he did not have to say anything; that anything he did say could be used against him, and that he had a right to an attorney [R. T. p. 90].

That warning met the Constitutional requirements in operation at the time of trial.

Trial of this matter commenced on February 3, 1966, and as the Court held in Johnson v. New Jersey, 384 U. S. 719, 734 (1966), the requirements of Miranda v. Arizona, 384 U. S. 436 (1966), with reference to the requirement of advising a defendant that if he does not have funds with which to hire an attorney that counsel will be furnished for him are not controlling in determining the admissibility of statements. The admissibility of Appellant's statement is dependent upon the fact that it was voluntary and if the ruling set forth in Escobedo v. Illinois, 378 U. S. 454 (1964), has been violated. In Escobedo, supra, the Court held that when a suspect had requested and was then denied an opportunity to consult with an attorney and when the police had not effectively warned him of his absolute right to remain silent, any statement he might make under those circumstances will be inadmissible. Id. at 490-491. If a defendant knowingly is aware of his right to remain silent and to have counsel and does not request such counsel he has waived such assistance. See, United States v. Childress, 347 F. 2d 448, 450 (7th Cir. 1965); Hayes v. United States, 347 F. 2d 668 (8th Cir.

1965).

Appellant suggests that the damaging statements made by him were elicited because Appellant's father had stated to him that one of the narcotic agents had told him he would be taken in as an accomplice [R. T. p. 246]. Appellant admits that no officer made any such threat to him [R. T. 258].

Finally, Appellant offered no further evidence respecting this contention.

Appellant's statements were voluntarily made after a proper Constitutional warning. The Court properly received them in evidence.

V

CONCLUSION

For the reasons stated the Judgment of the District Court should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Stephen D. Miller

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